

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

PNC BANK, NATIONAL ASSOCIATION,	)	
Plaintiff,	)	
v.	)	
KALABHAI A. PATEL A/KA/ KEN	)	
PATEL, et. al.,	)	
Defendants.	)	
And	)	No. 2014 CV 9795
UNITED STATES OF AMERICA,	)	
Counter-Plaintiff,	)	
v.	)	
PNC BANK, NATIONAL ASSOCIATION;	)	
KALABHAI A. PATEL A/KA/ KEN	)	
PATEL; AMBABEN PATEL; U.S. 45 &	)	
ILLINOIS 137, INC.; STATE BANK OF	)	
TEXAS; UNKNOWN OWNERS AND	)	
NON-RECORD CLAIMANTS	)	
Counter-Defendants.	)	

**COUNTERCLAIM OF THE UNITED STATES OF AMERICA**

The United States of America, by Zachary T. Fardon, United States Attorney for the Northern District of Illinois, on behalf of the Small Business Administration (the "Counter-Plaintiff" or the "SBA") seeks the entry of a judgment of foreclosure and sale. Pursuant to 735 ILCS § 5/15-1504(h), the Counter-Plaintiff opts to have its counterclaim shall stand in lieu of an answer to the Plaintiff's complaint for foreclosure, including any amendment, and all other party's counterclaims, previously or hereafter filed. Except to the extent that Counter-Plaintiff admits any of the allegations of any complaint or counterclaim, it denies or lacks information with which to admit or deny the allegations.

Counter-Plaintiff files this Counterclaim to foreclose the mortgage, trust deed or other conveyance in the nature of a mortgage hereinafter described, and joins the following persons as Counter-Defendants: PNC Bank, National Association; Kalabhai A. Patel

a/k/a Ken Patel; Ambaben Patel; Rashila Patel; U.S., 45 & Illinois 137, Inc. State Bank of Texas; Unknown Owners and Non-Record Claimants.

1. Attachments. Attached hereto are the following:

a) A copy of the promissory note in the sum of \$611,000.00 made by Varahini, Inc., the maker, and secured by the Counter-Plaintiff's mortgage (the "Note"). (Exhibit "A");

b) A copy of the mortgage securing the Note (the "Mortgage"). (Exhibit "B");

c) A copy of the assignment (Exhibit "C");

2. Information concerning Mortgage:

a) Nature of instrument: A real estate mortgage;

b) Name or names of mortgagor or mortgagors: Kalabhai A. Patel, a/k/a Ken Patel and Ambaben Patel.

c) Name of mortgagee, trustee or grantee in Mortgage: U.S. Small Business Administration and Indiana Statewide Certified Development Corporation;

d) Date and place of recording of Mortgage: Mortgage recorded in the Office of the Recorder of Deeds of Lake County, Illinois on August 16, 2000 as identification of recording: Document No. 4568115;

e) Estate conveyed: Fees simple title conveyed as security;

f) Amount of original indebtedness: \$611,000.00;

g) Legal description of mortgaged premises, common address and tax identification:

LOTS 1 AND 2 IN LAKE COUNTY SUBDIVISION OF THAT PART OF THE SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 1, TOWNSHIP 44 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE NORTHERLY RIGHT-OF-WAY OF STATE BOND ISSUE ROUTE NO. 21, ACCORDING TO THE PLAT THEREOF, RECORDED APRIL 4, 1939, AS DOCUMENT NUMBER 460734, IN BOOK "Z" OF PLATS, PAGE 35, IN LAKE COUNTY ILLINOIS.

Common address: 31225 North Highway 45, Libertyville, IL  
PIN: 10-01-402-001 and 10-01-402-002 (the "Property");

h) Status of Loan and statements as to defaults: The loan is in default by virtue of Varahini, Inc.'s failure to make the installments under the Note when due and because of Plaintiff's foreclosure claim. By reason of this default, Counter-Plaintiff has elected to and does hereby declare immediately due and payable the entire principal balance and all other sums secured by the Mortgage. The principal balance for the loan now due and owing to Counter-Plaintiff, through January 27, 2015, is \$561,450.46, plus interest of \$460,732.10. Under the Note interest accrues at a rate of \$112.26 per day. In addition, Counter-Plaintiff seeks the recovery of all prepayment penalties, costs and expenses of this action.

i) Name or names of present owner or owners of premises: Kalabhai A. Patel, a/k/a Ken Patel and Ambaben Patel.

j) Name or names of persons, in addition to such owner or owners, but excluding any Nonrecord Claimants, as defined in the Illinois Mortgage and Foreclosure Act, as heretofore and hereafter amended, who are joined as Counter-Defendants and:

(1) Whose right, title and interest in the property is sought to be terminated: Kalabhai A. Patel a/k/a Ken Patel; Ambaben Patel; Rashila Patel; U.S., 45 & Illinois 137, Inc. State Bank of Texas; Unknown Owners and Non-Record Claimants and

k) Names of defendants claimed to be personally liable for deficiency, if any:

None;

l) That in addition to persons identified herein by name there are other persons who may be interested in this action or who may have some right, title, interest or lien in, to or upon the real estate, or some part thereof, in this Counterclaim described; that the name of each such other person is unknown to Counter-Plaintiff and on diligent inquiry cannot be ascertained, and all such persons are therefore made parties Counter-Defendants to this action by the name and description "Unknown Owners", but the interests of said parties, if any, are subject, inferior, and subordinate to the lien of the Mortgage being foreclosed herein;

m) That in addition to persons designated by name herein and the unknown – Counter-Defendants herein above referred to there are other persons who may be interested in this action and who may have or claim some right, title, interest or lien in, to or upon the real estate, or some part thereof, in this Counterclaim described which have been designated herein as: "Nonrecord Claimants"; that the name of each of such other persons is unknown to Counter-Plaintiff and on diligent inquiry cannot be ascertained, and all such persons are therefore made parties Counter-Defendant to this action by the name and description of "Nonrecord Claimants", and their interest, if any, is subject, subordinate and inferior to lien of the Counter-Plaintiff's Mortgage being foreclosed herein;

n) Capacity in which Counter-Plaintiff brings this suit: The Small Business Administration is the legal owner and holder of the Note and Mortgage herein described and is entitled to all sums due thereunder;

o) Counter-Plaintiff seeks inclusion of Counter-Plaintiff's attorneys' fees, costs, and expenses in the judgment; and

p) Counter-Plaintiff asserts its rights of redemption under 28 U.S.C. 2410.

COUNTER-PLAINTIFF PRAYS:

I. For the entry of a judgment of foreclosure and sale of the Property;

II. For the declaration that SBA's secured claim is senior to: PNC Bank, National Association; Kalabhai A. Patel a/k/a Ken Patel; Ambaben Patel; Rashila Patel; U.S., 45 & Illinois 137, Inc. State Bank of Texas; Unknown Owners and Nonrecord Claimants, and to the extent senior terminate their right, title, and interest in the Property;

III. For a right of redemption, as provided by 28 U.S.C. 2410(c); and

IV. For such other and further relief as may be equitable and just.

ZACHARY T. FARDON  
UNITED STATES ATTORNEY

By: 

MICHAEL KELLY

Assistant United States Attorney

219 South Dearborn Street

Chicago, Illinois 60604

312/353-8449

Attorney No. 6289908

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**NOTICE OF FILING**  
**AFFIDAVIT**

John Baker, an employee by the United States Small Business Administration ("SBA"), being first duly sworn, on oath, deposes and says:

1. That he is an attorney in the SBA's Illinois District Office and has responsibility for SBA loans in Illinois, which includes the review of all of loan documents.
2. That the loan documents described below establish that this loan was made pursuant to 15 U.S.C. 696 and 697 and 13 CFR Section 120 *et. seq.* (the "Section 504 loans").
3. That pursuant to 13 CFR 120.954, Wells Fargo Bank ("Wells Fargo") is the current central servicing agent (CSA) for SBA's 504 loans. In accordance with 13 CFR 120.85, as the CSA, Wells Fargo collects loan payments and generates a transcript of account, reflecting all payments received and applied on the loan.
4. That affiant regularly uses Wells Fargo's transcript of borrower's loan and has from that experience found Wells Fargo's transcripts of borrower's loan account to be accurate.
5. That affiant has become familiar with the SBA's policies and procedures for the retention of the original copies of notes, mortgages, and other related loan documents in the SBA loan file records.
6. That based upon his experience affiant has found that the below identified loan documents were retained in a SBA loan closing file, designated for the loan made to Varahini, Inc. in accordance the SBA's policies and procedures for the maintenance of its loan files, that the loan file was safeguarded in the SBA's secure central servicing location, and that when the loan file was retrieved affiant found that the documents for this loan to have been retained in the same order and state of completion as required by SBA loan closing policies and procedures.
7. That Affiant has compared Exhibits "A" through "D" to the documents contained in the SBA's loan closing file and after making that review can testify that each of the exhibits are identical to those contained in the loan file.

8. That on or about, April 18, 2000, Varahini, Inc., borrowed the sum of \$611,000 from Indiana Statewide Certified Development Corporation. As evidence for said loan Varahini, Inc., made, executed, and delivered to Indiana Statewide Certified Development Corporation, its promissory note dated April 18, 2000 in the original principal sum of \$611,000 (hereafter referred to as the "Note").

9. That a true and correct copy of the Note, as contained in the SBA's loan file, is attached hereto as Exhibit "A" and made a part hereof.

10. That as security for the repayment of the Note, Kalabhai A. Patel, a/k/a Ken Patel and Ambaben Patel, granted Indiana Statewide Certified Development Corporation a mortgage, dated April 18, 2000, in the real estate located in Libertyville, Illinois, and legally described as follows:

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Common address: 31225 North Highway 45, Libertyville, IL (the "Property")

PIN: 10-01-402-001 and 10-01-402-002;

The Mortgage was recorded in the Office of the Recorder of Deeds of Lake County, Illinois, on August 16, 2000, as Document No. 4568115 in the SBA's loan file, is attached hereto as Exhibit "B" and made a part hereof.

11. This Mortgage was subsequently assigned to the SBA on April 17, 2000 in the SBA's loan closing file, attached hereto as Exhibit "C".

12. That according to SBA's records, a monetary default occurred under the Note, in that the borrower has failed to make or fully make each of the monthly installments of \$4,835.30, due under the Note since April 22, 2008. As a result, the balance of the Note was been accelerated, all of the principal, interest and costs became due, and a default under the Mortgage occurred.

13. That SBA's records indicate there is now due and unpaid on the indebtedness, the principal sum of \$561,450.46 plus accrued interest of \$460,732.10, as of January 27, 2015 together with the interest accruing thereafter at the rate of \$112.26 per day, until payment is made. A copy of the SBA's statement of account is attached as Exhibit "D".

Dated: \_\_\_\_\_, 2015

Subscribed and sworn to

\_\_\_\_\_  
John Baker

this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Notary Public